

Merit Systems Protection Board

§ 1201.134

(3) The judge to whom the complaint is assigned shall provide a person alleged to have been the subject of any prohibited personnel practice alleged in the complaint the opportunity to make written comments, regardless of whether that person has requested and been granted intervenor status. 5 U.S.C. 1214(b)(3)(B).

(b) *Filing and default.* An agency named as respondent in a Special Counsel corrective action complaint may file an answer with the judge to whom the complaint is assigned within 35 days of the date of service of the complaint. If the agency fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the judge's decision.

(c) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent agency has no knowledge of a fact, it must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

§ 1201.131 Judge.

(a) The Board will assign a corrective action complaint brought by the Special Counsel under this subpart to a judge, as defined at § 1201.4(a) of this part, for hearing.

(b) The judge will issue an initial decision on the complaint pursuant to 5 U.S.C. 557. The applicable provisions of §§ 1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the jurisdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

[62 FR 48451, Sept. 16, 1997, as amended at 62 FR 66815, Dec. 22, 1997]

§ 1201.132 Final decisions.

(a) In any Special Counsel complaint seeking corrective action based on an allegation that a prohibited personnel practice has been committed, the judge, or the Board on petition for re-

view, may order appropriate corrective action. 5 U.S.C. 1214(b)(4)(A).

(b)(1) Subject to the provisions of paragraph (b)(2) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D), the judge, or the Board on petition for review, will order appropriate corrective action if the Special Counsel demonstrates that a disclosure or protected activity described under 5 U.S.C. 2302(b)(8) or 2302(b)(9)(A)(i), (B), (C), or (D) was a contributing factor in the personnel action that was taken or will be taken against the individual.

(2) Corrective action under paragraph (b)(1) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure or protected activity. 5 U.S.C. 1214(b)(4)(B).

[62 FR 48451, Sept. 16, 1997, as amended at 78 FR 39545, July 2, 2013]

§ 1201.133 Judicial review.

An employee, former employee, or applicant for employment who is adversely affected by a final Board decision on a corrective action complaint brought by the Special Counsel may obtain judicial review of the decision as provided by 5 U.S.C. 7703.

[78 FR 39545, July 2, 2013]

SPECIAL COUNSEL REQUESTS FOR STAYS

§ 1201.134 Deciding official; filing stay request; serving documents on parties.

(a) *Request to stay personnel action.* Under 5 U.S.C. 1214(b)(1), the Special Counsel may seek to stay a personnel action if the Special Counsel determines that there are reasonable grounds to believe that the action was taken or will be taken as a result of a prohibited personnel practice.

(b) *Deciding official.* Any member of the Board may delegate to an administrative law judge the authority to decide a Special Counsel request for an initial stay. The Board may delegate to a member of the Board the authority to rule on any matter related to a stay that has been granted to the Special